No. 258

In the Supreme Court of the United States

OCTOBER TERM, 1940

L. K. PERSON, PETITIONER,

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES IN OPPOSITION

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CITATIONS

253777—40

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OPINIONS BELOW

The judgment of the District Court (R. 17) was entered without an opinion. The opinion of the Circuit Court of Appeals for the Eighth Circuit (R. 26–29) is reported in 112 F. (2d) 1.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Eighth Circuit was entered May 16, 1940 (R. 29–30). A petition for rehearing was denied June 11, 1940 (R. 47). The petition for a writ of certiorari was filed July 19, 1940. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a state statute of limitations bars a suit by the United States to recover an unpaid balance due on a crop loan.

2. Whether, under Rule 56 of the Rules of Civil Procedure, judgment on the pleadings was properly entered in favor of the United States.

STATEMENT

On October 15, 1937, the United States brought suit on a note against the petitioner in the United States District Court for the Western District of Arkansas (R. 2). The complaint alleged that the petitioner had made, executed, and delivered to the Secretary of Agriculture of the United States [1] a promissory note in the sum of $3,000, dated March 25, 1931, due on or before October 31, 1931, with interest at the rate of 5 percent per annum (R. 2), and that, after allowing certain credits against the principal and interest, there remained due and owing on the note the sum of $1,914.57 principal, together with accrued interest, for which amount, judgment was prayed (R. 2–3). The note was given in consideration of a loan made by the Secretary of Agriculture, pursuant to the Joint Resolution of Congress approved December 20, 1930,

[1] The complaint also alleged that the President of the United States, by Executive Order dated March 27, 1933, (No. 6084) appointed the Governor of the Farm Credit Administration as successor of the Secretary of Agriculture "agent and payee of the plaintiff herein" (R. 2).

46 Stat. 1032, for the purchase of seed, fertilizer, and feed for work stock (R. 3–4), and was secured by a mortgage on the crops growing, or to be grown, on a certain parcel of land during the year 1931 (R. 12–13). The petitioner filed two motions requiring the respondent to make the complaint more definite and certain (R. 4, 5–6); the motions were overruled after the United States had made its complaint more definite and certain with respect to the dates and manner in which the credits were computed (R. 6–7). A motion to dismiss was also overruled (R. 10), and the petitioner filed an answer (R. 10–12) which, after entering a general denial, set up affirmatively the Arkansas statute of limitations of five years as a "complete defense," and denied that any payments were made on the note by petitioner after the year 1931 (R. 10–12). The crop mortgage was attached to the answer as an exhibit (R. 11, 12–14). The United States thereupon moved for a judgment on the pleadings and in support of such motion submitted an affidavit [2] of the regional manager of the Emergency Crop and Feed Loan Office, Farm Credit Administration, at Memphis, Tennessee, setting forth the amount due

[2] The court below held that the affidavit was insufficient under Rule 56 (c) of the Rules of Civil Procedure to support a summary judgment inasmuch as it failed to recite that it was made "on personal knowledge." The court, however, held that the insufficiency of the affidavit would not require reversal as it had to do with payments on the note, and that no issue as to payments was drawn by the pleadings (R. 29).

on the note and the manner in which the balance due was calculated (R. 14–16). The original note was also filed (R. 17). The District Court thereupon entered judgment for the United States (R. 17); the Circuit Court of Appeals for the Eighth Circuit affirmed (R. 29–30).

ARGUMENT

1. The petitioner contends that, by lending money to a farmer at commercial rates of interest, the United States divests itself of its sovereignty with respect to the transaction and, in a suit to recover such a loan, subjects itself to state statutes of limitations—in this case the five-year statute of the State of Arkansas. This precise question was before this Court in *United States* v. *Summerlin*, No. 715, October Term, 1939, decided May 27, 1940.

In the *Summerlin* case, the United States had insured a loan, evidenced by a note, under the Federal Housing Administration Act. The maker defaulted and soon thereafter died, and the United States reimbursed the insured institution, taking an assignment of the note. It then sought to file its claim with the Florida administratrix of the original debtor after the expiration of the time provided under the state statute for the filing of such a claim. The Florida courts rejected the claim of the United States, holding that it had become void because it had not been filed with the administratrix within the statutory period. There, as here, the argument was advanced that the

United States, by lending money at interest, had entered the commercial field and had so divested itself of its sovereignty as to be subject to state statutes of limitations. It was further urged that when the United States becomes a party to a negotiable paper, it is subject to all defenses that might be advanced against a private party. This Court rejected these contentions, and reaffirmed the rule that the United States is not bound by state statutes of limitations or subject to the defense of laches in enforcing its rights. We respectfully submit that the *Summerlin* case is decisive of the present controversy.

2. The petitioner also urges that the court below erred in affirming the order of the District Court granting judgment on the pleadings. The petitioner does not contend that he did not execute the note; indeed he concedes that he may have admitted its execution by inference (Pet. 10, 16).[3] He does contend, however, that he was entitled, under the pleadings, to present evidence to show that the United States was engaged in business and to test the accuracy and sufficiency of the amount of the credits allowed him (Pet. 6).

The question as to whether the United States was acting in a commercial and not a sovereign capacity is a question of law which does not de-

[3] The original note itself was filed with the District Court (apparently without objection on the part of the petitioner), and is included in the record (R. 17).

pend for its solution upon evidence. See pp. 4–5, *supra*. With reference to the question of the amount of payments made or credit given, the court below correctly observed (R. 28) that the "only allegations in the answer referring to payments did not challenge the amounts but (for purposes of limitations) denied any payments had been made beyond a certain date." Under Rule 12 (b) and (h) of the Rules of Civil Procedure, as well as under applicable Arkansas law (*Interstate Jobbing Company* v. *Velvin,* 172 Ark. 212), payment is a defense which must be pleaded affirmatively. Since no issue of payment was raised by the pleadings in the instant case, any evidence relating to such an issue would have been inadmissible. Plainly there was no error in granting a summary judgment on the pleadings.

CONCLUSION

The decision of the court below is correct. There is no conflict. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

FRANCIS BIDDLE,
Solicitor General.
FRANCIS M. SHEA,
Assistant Attorney General.
PAUL A. SWEENEY,
Special Assistant to the Attorney General.

AUGUST 1940.

U. S. GOVERNMENT PRINTING OFFICE: 1940